

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CRIMINAL MISC.APPLICATION No. 519 of 2000

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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- 1 Whether Reporters of Local Papers may be allowed
to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy
of the judgment ?
- 4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?
- 5 Whether it is to be circulated to the civil judge
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ANILKUMAR U AMIN - Applicant(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR RD DAVE for Applicant(s) : 1,
MR KT DAVE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
RULE UNSERVED for Respondent(s) : 2,
RULE SERVED BY DS for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 11/09/2007

ORAL JUDGMENT

1. By way of this application under section 482 of
the Criminal Procedure Code, the applicant –

original accused has prayed for an appropriate order to quash and set aside the complaint being Criminal Case No.1587 of 1993 registered and pending on the file of the learned JMFC, Jhalod, District Panchmahals and also to quash and set aside the order dated 13.12.1993 passed by the learned JMFC, Jhalod in issuing the process against the applicant under sections 406 & 420 of the Indian Penal Code.

2. A criminal complaint being Criminal Case No.1587 of 1993 has been filed by the respondent No.2 herein before the learned JMFC, Jhalod against the applicant for the offence punishable under sections 406 and 420 of the Indian Penal Code alleging inter alia that the applicant had approached respondent No.2 on 20.8.1993 at the residence and has inquiring as to whether respondent No.2 wanted to be admitted in the Manekba Amin College of Fine Arts and it was allegedly represented by the applicant that every year there is a recruitment drive of the students and if the respondent No.2 wants to be

admitted he should get his name registered and the respondent No.2 paid fees of Rs.1950/- on 20.8.1993 at his residence and it was further allegedly represented by the applicant that after the order is received he would give the receipt for Rs.1950/-. It was also further alleged in the complaint that after having received the order for being admitted to the said college, the respondent No.2 presented himself on 1.10.1993 and thereafter after about 7 days, he was transferred to Santrampur and according to the complainant the applicant had driven him away. It was further alleged in the complaint that on payment of the fees, the receipt was not given and was relived from the said institution and the fees paid by the complainant was not returned and therefore it was alleged that the applicant has committed offence under sections 420 and 406 of the Indian Penal Code. That the said complaint was filed before the learned JMFC, Jhalod on 13.12.1993 and after recording the statement of the complainant, straight way, the learned JMFC took

cognizance of the aforesaid offence and ordered to issue summons against the applicant – accused. It appears that before filing this application for quashing the complaint, the applicant – accused first approached the learned Magistrate by way of application / reply dated 13.2.1995 at Exh.50 in th aforesaid criminal case No.1587 of 1993, however, no order was passed and every time the applicant was required to remain present before the learned Magistrate and therefore, the applicant has preferred present application under section 482 of the Criminal Procedure Code for quashing and setting aside the aforesaid complaint.

3. Shri R.D.Dave, learned advocate appearing for the applicant – original accused has vehemently submitted that the applicant has not committed any offence as alleged under sections 420 and 406 of the Indian Penal Code. It is submitted that the admission in the Manekba Amin College of Fine Arts was to be given according to the merit list prepared by the office of the

Commissioner of Higher Education and the allotment is also made by the said authority and no institution including Manekba Amin College of Fine Arts was entitled to admit any student on its own on account of centralize admission polity. It is further submitted by him that in the year 1993-94 by communication dated 1.9.1993 the Joint Director of Education informed the applicant that with respect to the admission for the educational year 1993-94, the list of the students admitted and allotted to the said institution should be obtained from the office of the Commissioner of Higher Education and according to the list admission should be given to the students till 11.9.1993. It is also further submitted that according to the list dated 13.9.1993 prepared by the office of the Commissioner of Higher Education, various students including the respondent No.2 herein, whose name appears at Serial No.54 in the said list were allotted to Manekba Amin College of Fine Arts. It is submitted that on admission of the said students, he was required to pay

admission fees of Rs.1200/- which was acknowledged under a receipt dated 13.9.1993. It is submitted that original receipt is already been given to the respondent No.2 at the time when he was admitted and when he paid fees. It is submitted that on 21.9.1993 an application was tendered by the respondent No.2 addressed to the Joint Director of Education, State of Gujarat requesting for transfer to Santrampur Art Teacher College and the applicant made recommendation to the Joint Director of Education to consider the application for transfer of respondent No.2 and the applicant forwarded the said application by its forwarding letter dated 29.3.1993. It is submitted that the office of the Commissioner of Higher Education permitted the transfer of the respondent No.2 and accordingly, he was transferred to Santrampur. It is submitted that so far as the matter of transfer is concerned, the same is governed by order dated 7.10.1993 and the procedure was required to be followed with regard to fees, etc., and considering the same,

it cannot be said that the applicant has committed any offence as alleged under sections 420 and 406 of the Indian Penal Code, more particularly, when the respondent No.2 tendered the original receipt with regard to fees while admitting in Santrampur college. Therefore, it is requested to allow present application as to continue criminal proceedings against the applicant is nothing but abuse of process of law and unnecessary harassment to the applicant.

4. Shri K.T.Dave, learned APP has requested to pass appropriate order considering the averments and allegations in the complaint.

5. Heard the learned advocates appearing on behalf of the respective parties.

6. At the outset, it is required to be noted that the admission was required to be given and in fact, given to the respondent No.2 under the centralized admission scheme of the State Government and the merit lists prepared by the

Admission Committed and it also appears that initially the respondent No.2 was allotted to Manekba Amin College of Fine Arts, however, subsequently, respondent No.2 – original complainant has requested for transfer to Santrampur college and the same was considered even considering the recommendations of the applicant and the respondent No.2 – original complainant got the admission at Santrampur college on production of the receipt with regard to payment of fees by him. It is the case on behalf of the respondent No.2 – original complainant that as the fees paid by him has not been returned and/or refunded by the applicant and therefore, the applicant has committed offence under sections 420 and 406 of the Indian Penal Code. Looking to the above and the procedure for admission, it cannot be said that the applicant has committed any offence under sections 420 and 406 of the Indian Penal Code. The ingredients for making out a case under sections 420 and 406 of the Indian Penal Code are not satisfied and even on bare reading of

the complaint, it cannot be said that a case is made out against the applicant for the offence under sections 420 and 406 of the Indian Penal Code. Under the circumstances, the learned trial Court has committed error in straight way issuing process against the applicant for the offence punishable under sections 420 and 406 of the Indian Penal Code. In the facts and circumstances of the present case, as no case is made out against the applicant for the offence under sections 420 and 406 of the Indian Penal Code, to continue criminal proceedings by way of aforesaid complaint / criminal case against the applicant would be abuse of process of law and unnecessary harassment to the applicant. It appears to the Court that this is a fit case to exercise powers under section 482 of the Criminal Procedure Code to quash and set aside the impugned complaint.

7. For the reasons stated above, application succeeds. Impugned complaint being criminal case No.1587 of 1993 pending in the Court of learned

JMFC, Jhalod, District Panchmahals and the process issued by the learned trial Court in said complaint are hereby quashed and set aside. Rule is made absolute accordingly.

[M.R.Shah, J.]

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